

Reaffirmation Agreements
11 U.S.C. § 524
BR Act Section 203

Substantial revisions have been made to Section 524, which governs reaffirmation agreements. Under these revisions, creditors must include very specific language in reaffirmation agreements; debtor's attorneys must submit certifications to accompany agreements; unrepresented debtors must submit motions for approval of agreements; the court must review reaffirmation agreements if a presumption of undue hardship exists (based on the debtor's monthly income and expenses); and some discharges shall be held until necessary hearings are concluded.

- I. Debtor or creditor files reaffirmation agreement (which must include prescribed disclosures pursuant to the statute)¹: The agreement:
 - A. must state monthly income and current monthly expenses, and identify amount available to payments on debt being reaffirmed;
 - B. must include the Debtor's Statement in Support of the Reaffirmation Agreement, which must state that entering into reaffirmation agreement will not impose "undue hardship" on debtor.
- II. If represented by counsel, debtor's attorney must sign certification that:
 - A. the debtor has been fully informed and that the agreement is voluntary; and
 - B. the agreement does not represent an undue hardship on debtor; and
 - C. if a presumption of undue hardship is established, that the attorney believes that debtor shall be able to make the payment.
- III. If not represented by counsel²:
 - A. Debtor must submit a motion for approval of the reaffirmation to the court (requirements set out in the statute);

¹ The Bankruptcy Reform Working Group raised the issue of whether the Rules Committee might consider revisions to Director's Form B240, to incorporate the new requirements under the Act. It is our understanding that the Rules Committee will not issue a revised form, and instead may be considering withdrawing the current form, preferring to let creditors address the substantial new requirements of the Act.

² These requirements shall apply if the debtor is pro se with regard to the entire case or whether the debtor is proceeding pro se only with regard to the reaffirmation agreement, i.e., if the attorney refuses to sign the required certification.

- B. Court shall give notice and hold a hearing on approval of the reaffirmation agreement.
 - C. Court shall enter an Order approving/denying the agreement.
 - D. Clerk should hold entry of discharge until hearing is concluded.
- IV. For 60 days following the submission of a reaffirmation agreement, the agreement shall be presumed to create an undue hardship if the total of the debtor's monthly expenses plus the amount required to reaffirm the debt is greater than the debtor's monthly income.
- A. the court shall review the presumption of undue hardship;
 - B. the debtor may rebut presumption, in writing, by identifying additional sources of payment to meet obligations under reaffirmation
 - i. the court may disapprove the agreement;
 - ii. must be on notice and hearing, concluded prior to discharge.
 - C. The requirements of this subsection shall not apply where the creditor is a credit union.